IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION 1:06cv299

JACQUELINE SEAY,)
Plaintiff,)
Vs.) ORDER
MICHAEL J. ASTRUE, Commissioner of Social Security,)))
Defendant.))

THIS MATTER is before the court on plaintiff's "Petition for Payment of Attorney's Fees" (#26). While plaintiff seeks such payment under the Equal Access to Justice Act ("EAJA") 28, United States Code, Section 2412(d), plaintiff is not a "prevailing party" in this matter inasmuch as the remand obtained herein was under Sentence Six of 42, United States Code, Section 405(g). Indeed, the United States Supreme Court has clearly held since 1993 that while a Sentence Four remand terminates litigation with a victory for plaintiff, a remand under Sentence Six does not. Shalala v. Schaefer, 1509 U.S. 292, 301 (1993).

As indicated by the lack of a judgment entered in this matter, the court retains jurisdiction over this case pending resolution of the administrative proceedings. The Order of Remand provided "that, pursuant to sentence six of 42 U.S.C. § 405(g), this case is remanded to the defendant Commissioner. No judgment shall be entered in this matter at this time." Docket Entry 24, at 1.

ORDER

IT IS, THEREFORE, ORDERED that plaintiff's Petition for Payment of Attorney's Fees (#26) is **DENIED** for lack of standing as a prevailing party under EAJA.

Signed: July 18, 2007

Dennis L. Howell United States Magistrate Judge